

SECOND COMMITTEE

Formulation of main trends

INTRODUCTION

The sole purpose of this informal working paper is to reflect in generally acceptable formulations the main trends which have emerged from the proposals submitted either to the United Nations Sea-Bed Committee or to the Conference itself.

The fact of including these formulations does not imply any opinion on the degree of support they have commanded either in the preparatory stage or in the proceedings of the current session of the Conference. It does not imply either that all the proposals from which these formulations have been taken have been the subject of discussion. The inclusion of a provision in this paper, whether or not only one formula appears, does not necessarily imply that there are no other opinions concerning these questions or that all or most delegations agree on the necessity for such a provision.

All the proposals submitted to the United Nations Sea-Bed Committee and to the Conference are maintained and may be considered by this Committee at any time. Thus, the preparatory of this document and its acceptance by the Committee as a working paper in no way signifies that these proposals have been withdrawn. There is no question of taking any decisions at the present stage, in accordance with the method of work adopted by the Committee at its meeting on 3 July, once this task has been carried out, the item will be "frozen" and the Committee will pass on to the next item. No decision has to be taken until all the closely interrelated items have been thoroughly discussed.

Since the purpose of this paper is to focus the discussion of each of the items on the fundamental issues, leaving until later the consideration of supplementary rules and drafting points, the paper does not include all the proposals appearing in volume III of the report of the Sea-Bed Committee or all the variants, many of which reflect only drafting changes, appearing in volume IV of the same report.

Item 19 - Régime of islands

PROVISION I

Definitions

- (a) Islands under colonial dependence or foreign domination or control

PROVISION II

- (b) Other related matters

PROVISIONS III-IV

Maritime spaces of islands

PROVISION V

Baselines

PROVISION VI

Delimitation

Item 19 - Régime of islands

Definition

PROVISION I

Formula A

An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

Formula B

1. An island is a vast naturally formed area of land, surrounded by water, which is above water at high tide.
2. An islet is a smaller naturally formed area of land, surrounded by water, which is above water at high tide.
3. A rock is a naturally formed rocky elevation of ground, surrounded by water, which is above water at high tide.
4. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide.

Formula C

1. An islet is a naturally formed elevation of land (or simply an eminence of the sea-bed) less than one square kilometre in area, surrounded by water, which is above water at high tide.
2. An island similar to an islet is a naturally formed elevation of land (or simply an eminence of the sea-bed) surrounded by water, which is above water at high tide, which is more than one square kilometre but less than ... square kilometres in area, which is not or cannot be inhabited (permanently) or which does not or cannot have its own economic life.

- (a) Islands under colonial dependence or foreign domination or control

PROVISION II

Formula A

In respect of a territory whose people have attained neither full independence nor some other self-governing status following an act of self-determination under the auspices of the United Nations, the rights to the resources of the economic zone created in respect of that territory and to the resources of its continental shelf are vested in the inhabitants of that territory to be exercised by them for their benefit and in accordance with their needs and requirements. Such rights may not be assumed, exercised or profited from or in any way infringed by a metropolitan or foreign power administering or occupying that territory.

Formula B

1. No economic zone shall be established by any State which has dominion over or controls a foreign island in waters contiguous to that island.
2. The inhabitants of such islands shall be entitled to create their economic zone at any time prior to or after attaining independence or self-rule. The right to the resources of such economic zone and to the resources of its continental shelf are vested in the inhabitants of that island to be exercised by them for their benefit and in accordance with their needs or requirements.
3. In case the inhabitants of such islands do not create an economic zone, the Authority shall be entitled to explore and exploit such areas, bearing in mind the interests of the inhabitants.

Formula C

The rights recognized or established in the present Convention shall not be invoked by the colonial or occupying Power in respect of islands and other territories under colonial domination or foreign occupation as long as that situation persists.

Formula D

Concerning islands under colonial domination, racist régime or foreign occupation, the rights to the maritime spaces and to the resources thereof belong to the inhabitants of those islands and must profit only their own development.

No colonial or foreign or racist Power which administers or occupies those islands shall exercise those rights, profit from them or in any way infringe upon them.

(b) Other related matters

PROVISION III

Article A

1. Maritime spaces of islands shall be determined according to equitable principles, taking into account all relevant factors and circumstances including, inter alia:
  - (a) The size of islands;
  - (b) The population or the absence thereof;
  - (c) Their contiguity to the principal territory;
  - (d) Whether or not they are situated on the continental shelf of another territory;
  - (e) Their geological and geomorphological structure and configuration.
2. Island States and the régime of archipelagic States as set out under the present Convention shall not be affected by this article.

/...

Formula B

1. Subject to paragraph 4 of this article, the territorial sea of an island is measured in accordance with the provisions of this Convention applicable to other land territory.
2. The economic zone of an island and its continental shelf are determined in accordance with the provisions of this Convention applicable to other land territory.
3. The foregoing provisions have application to all islands, including those comprised in an island State.
4. In the case of atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea shall be the seaward edge of the reef, as shown on official charts.

Formula C

1. The sovereignty and jurisdiction of a State extends to the maritime zones of its islands determined and delimited in accordance with the provisions of this Convention applicable to its land territory.
2. The sovereignty over the island extends to its territorial sea, to the air space over the island and its territorial sea, to its sea-bed and the subsoil thereof and to the continental shelf for the purpose of exploring it and exploiting its natural resources.
3. The island has a contiguous zone and an economic zone on the same basis as the continental territory, in accordance with the provisions of this Convention.

Formula D

1. An island situated in the economic zone or on the continental shelf of other States shall have no economic zone or continental shelf of its own if it does not contain at least one tenth of the land area and population of the State to which it belongs.
2. Islands without economic life and situated outside the territorial sea of a State shall have no marine space of their own.
3. Rocks and low tide elevations shall have no marine space of their own.

Formula E

1. The marine spaces of islets or islands similar to islets situated in the territorial sea, on the continental shelf or in the economic zone of another State shall be determined by agreement between the States concerned or by other means of pacific settlement used in international practice.

2. The ~~marine spaces~~ of such elevations of land situated in the international zone of the sea-bed shall be established by agreement with the international authority for that zone.

#### PROVISION IV

##### Formula A

1. In principle, a State may not invoke the existence, in one of its maritime zones, of islets or islands similar to islets, as defined in article ..., for the purpose of extending the marine spaces which belong to its coasts.
2. Where such elevations of land are situated along the coast of the same State, in immediate proximity thereto, they shall be taken into consideration, in accordance with the provisions of this Convention, for the purpose of establishing the baseline from which the breadth of the territorial sea is measured.
3. Where an islet or island similar to an islet is situated in the territorial sea of the same State but very close to its outer limit, the State in question may reasonably extend its territorial waters seaward or establish an additional maritime zone for the protection of lighthouses or other installations on such islet or island. The additional zones thus established shall in no way affect the marine spaces belonging to the coasts of the neighbouring State or States.
4. Islets or islands similar to islets which are situated beyond the territorial sea, on the continental shelf or in the economic zone of the same State, may have around them or around some of their sectors security areas or even territorial waters in so far as this is without prejudice to the marine spaces which belong to the coasts of the neighbouring State or States.

Where such eminences of the sea-bed are situated very close to the outer limit of the continental shelf or of the economic zone, the extension of their security zones or their territorial waters shall be established by agreement with the neighbouring State or States, or, where appropriate, with the authority for the international zone, having regard to all relevant geographic, geological or other factors.

##### Formula B

1. An island, islet, rock or a low-tide elevation are considered as adjacent when they are situated in proximity of the coasts of the State to which they belong.
2. An island, islet, rock or a low-tide elevation are considered as non-adjacent when they are not situated in the proximity of the coasts of that State to which they belong.
3. The baselines applicable to adjacent islands, islets, rocks and low-tide elevations, in accordance with article ..., are considered as the baselines applicable to the State to which they belong and consequently are used in the measurement of the marine spaces of that State.
4. The marine spaces of islands considered non-adjacent, in accordance with paragraphs ..., shall be delimited on the basis of relevant factors taking into account equitable criteria.

5. These equitable criteria should notably relate to:

- the size of these naturally formed areas of land;
- their geographical configuration and their geological and geomorphological structure;
- the needs and interests of the population living thereon;
- the living conditions which prevent a permanent settlement of population;
- whether these islands are situated on the continental shelf of another State or in the proximity of its marine space;
- whether, due to their situation far from the coast, they may influence the equity of the delimitation.

6. A State cannot claim jurisdiction over the marine space by virtue of the sovereignty or control which it exercises over a non-adjacent islet, rock or low-tide elevation as defined in paragraphs ... of article ...

7. In accordance with paragraph 4 of this article, safety zones of reasonable breadth may nevertheless be established around such non-adjacent islets, rocks or low-tide elevations.

8. The provisions of paragraphs 1-7 shall not apply either to island or to archipelagic States.

9. A coastal State cannot claim rights based on the concept of archipelago or archipelagic waters by reason of its exercise of sovereignty or control over a group of islands situated off its coasts.

#### Formula C

See Provision IV, Formula A; Provision V, Formula A; Provision VII, Formula A and Provision VIII of Informal Working Paper No. 1/Rev.2\*.

#### PROVISION V

##### Formula A

1. The delimitation of any marine or ocean space shall, in principle, be effected between the coasts proper of the neighbouring States, using as a basis the relevant points on the coasts or on the applicable baselines, so that the areas situated off the sea frontage of each State are attributed thereto.

2. Islands which are situated in the maritime zones to be delimited shall be taken into consideration in the light of their size, their population or the absence thereof, their situation and their geographical configuration, as well as other relevant factors.

/...

3. Low-tide elevations, islets and islands that are similar to islets (of small size, uninhabited and without economic life) which are situated outside the territorial waters off the coasts and which constitute eminences on the continental shelf - whether lighthouses or other installations have been built on them or not - and man-made islands - regardless of their dimensions and characteristics - shall not be taken into consideration in the delimitation of marine or ocean space between neighbouring States.
4. The naturally formed areas of land referred to in paragraph 3 may have around them or around some of their sectors maritime safety areas or even territorial waters, provided they do not affect marine spaces belonging to the coasts of neighbouring States.
5. The provisions of the present article shall not be applicable to islands and to other naturally formed areas of land which constitute part of an island State or of an archipelagic State.

Formula B

*Article L. 55, paragraph 4*

In areas of semi-enclosed seas, having special geographic characteristics, the maritime spaces of islands shall be determined jointly by the States of that area.

Formula C

1. In accordance with the provisions of article ..., paragraph ... and article ..., paragraphs ..., the delimitation of the marine spaces between adjacent and/or opposite States must be done, in the case of presence of islands, non-adjacent islets, rocks and low-tide elevations, by agreement between them according to principles of equity, the median or equidistance line not being the only method of delimitation.
2. For this purpose, special account should be taken of geological and geomorphological criteria, as well as of all other special circumstances.

Formula D

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line, every point of which is equidistant from the nearest points on the baselines continental or insular, from which the breadth of the territorial seas of each of the two States is measured.
2. Where the coasts of two or more States are adjacent or opposite to each other, the delimitation of the continental shelf boundaries shall be determined by agreement amongst themselves.
3. Failing such agreement, no State is entitled to extend its sovereignty over the continental shelf beyond the median line every point of which is equidistant from the nearest points of the baselines, continental or insular, from which the breadth of the continental shelf of each of the two States is measured.
4. Where the coasts of two or more States are adjacent or opposite to each other and the distance between them is less than double the uniform breadth, provided in this Convention, the delimitation of their economic zones and of their sea-bed areas shall be determined by agreement among themselves.



5. Failing such agreement, no State is entitled to extend its rights over an economic zone and sea-bed area beyond the limits of the median line every point of which is equidistant from the nearest points of the baselines, continental or insular, from which the breadth of the above areas of each of the two States is measured.

Formula E

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its maritime spaces beyond the median line, every point of which is equidistant from the nearest points on the baselines, continental or insular, from which the breadth of the maritime spaces of each of the two States is measured.

Formula F

Where the coasts of two or more States are adjacent and/or opposite to each other, the delimitation of the respective maritime spaces shall be determined by agreement among them in accordance with equitable principles, taking into account all the relevant factors including, inter alia, the geomorphological and geological structure of the sea-bed area involved, and special circumstances such as the general configuration of the respective coasts, and the existence of islands, islets or rocks within the area.

Formula G

1. The delimitation of the continental shelf or of the economic zone between adjacent and/or opposite States shall be effected by agreement between them in accordance with an equitable dividing line, the median or equidistance line not being the only method of delimitation.

2. For this purpose, account shall be taken, inter alia, of the special nature of certain circumstances, including the existence of islands or islets situated in the area to be delimited or of such kind that they might affect the delimitation to be carried out.

-----